

# HB0091S01 compared with HB0091

~~{deleted text}~~ shows text that was in HB0091 but was deleted in HB0091S01.

inserted text shows text that was not in HB0091 but was inserted into HB0091S01.

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Representative Kraig Powell proposes the following substitute bill:

## INTEREST RATE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** Kraig Powell

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies interest rate provisions.

#### Highlighted Provisions:

This bill:

- ▶ ~~{establishes}~~ addresses the application of a legal ~~{interest rate based on the federal postjudgment}~~ interest rate for a contract or other chose of action prior to judgment; and
- ▶ makes technical changes.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

This bill provides revisor instructions.

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### Utah Code Sections Affected:

AMENDS:

- ~~{14-1-19}~~15-1-1, as last amended by Laws of Utah ~~{2012, Chapter 330~~
- ~~14-2-1~~, as last amended by Laws of Utah 2012, Chapter 330
- ~~15-1-1~~, as last amended by Laws of Utah 1989, Chapter 79
- ~~31A-22-428~~, as last amended by Laws of Utah 2014, Chapters 290 and 300
- ~~31A-27a-512~~, as enacted by Laws of Utah 2007, Chapter 309
- ~~38-1a-309~~, as enacted by Laws of Utah 2012, Chapter 330
- ~~57-8-44~~, as last amended by Laws of Utah 2014, Chapter 116
- ~~57-8a-301~~, as last amended by Laws of Utah 2014, Chapter 116
- ~~63G-6a-1910~~, as last amended by Laws of Utah 2014, Chapter 196
- ~~}~~1989, Chapter 79

### Utah Code Sections Affected by Revisor Instructions:

- 15-1-1, as last amended by Laws of Utah 1989, Chapter 79

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section ~~{14-1-19}~~15-1-1 is amended to read:

~~{~~ ~~14-1-19. Failure of government entity to obtain payment bond -- Right of action~~  
~~-- Notice.~~

~~———— (1) If the state or a political subdivision fails to obtain a payment bond, it shall, upon demand by a person who has furnished labor or supplied materials to the contractor or subcontractor for the work provided for in a contract which is subject to Section 14-1-18, promptly make payment to that person.~~

~~———— (2) A person described in Subsection (1):~~

~~———— (a) shall have a direct right of action against the state or the political subdivision in any court having jurisdiction in any county in which the contract was to be performed, upon giving written notice to the state or political subdivision within 90 days from the date on which such person performed the last of the labor or supplied the last of the material for which claim is made;~~

~~———— (b) shall state in the notice a designation of the construction project and its location, the amount claimed, and the name of the party for whom the labor was performed or to whom the~~

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~~material was supplied; and~~

~~—— (c) shall serve the notice by registered or certified mail, postage prepaid, on the state agency or political subdivision that is a party to the contract.~~

~~—— (3) An action described in this section may not be commenced later than one year after the day on which the last of the labor was performed or material was supplied by the person bringing the action.~~

~~—— (4) Unless otherwise specified in a lawful contract between the state or the political subdivision against which the claim is made and the person demanding payment, the interest rate applicable to the payment or claim is the rate described in Subsection 15-1-1[(2)](3).~~

~~—— Section 2. Section 14-2-1 is amended to read:~~

~~—— 14-2-1. Definitions -- Payment bond required -- Right of action -- Attorney fees.~~

~~—— (1) For purposes of this chapter:~~

~~—— (a) "Commercial contract" means a contract for the construction, alteration, or repair of the following if it is not residential construction:~~

~~—— (i) a building;~~

~~—— (ii) a structure; or~~

~~—— (iii) an improvement upon land that is not associated with a single family detached housing;~~

~~—— (b) "Contractor" means any person who is or may be awarded an original commercial contract for the construction, alteration, or repair of any building, structure, or improvement upon land.~~

~~—— (c) "Owner" means any person contracting with the original contractor for construction, alteration, or repair of the following if it is not residential construction:~~

~~—— (i) a building;~~

~~—— (ii) a structure; or~~

~~—— (iii) an improvement upon land.~~

~~—— (d) (i) "Residential construction" means the construction, alteration, or repair of:~~

~~—— (A) single family detached housing; or~~

~~—— (B) multifamily attached housing up to and including a fourplex.~~

~~—— (ii) "Residential construction" includes rental housing.~~

~~—— (2) Before any original commercial contract exceeding \$50,000 in amount for the~~

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~~construction, alteration, or repair of any building, structure, or improvement upon land is awarded to any contractor, the owner shall obtain from the contractor a payment bond:~~

~~—— (a) complying with Subsection (3); and~~

~~—— (b) that becomes binding upon the award of the original commercial contract to the contractor.~~

~~—— (3) The payment bond shall be:~~

~~—— (a) with a surety or sureties satisfactory to the owner for the protection of all persons supplying labor, services, equipment, or material in the prosecution of the work provided for in the commercial contract; and~~

~~—— (b) in a sum equal to the original commercial contract price.~~

~~—— (4) A person shall have a right of action on a payment bond under this chapter for any unpaid amount due that person if that person:~~

~~—— (a) has furnished labor, services, equipment, or material in the prosecution of the work provided for in the commercial contract for which the payment bond is furnished under this chapter; and~~

~~—— (b) has not been paid in full within 90 days after the last day on which that person:~~

~~—— (i) performed the labor or service for which a claim is made; or~~

~~—— (ii) supplied the equipment or material for which the claim is made.~~

~~—— (5) (a) An action under this section shall be brought in a court of competent jurisdiction in the county where the commercial contract was to be performed and not elsewhere.~~

~~—— (b) An action under this section is barred if not commenced within one year after the last day on which the claimant:~~

~~—— (i) performed the labor or service on which the claim is based; or~~

~~—— (ii) supplied the equipment or material on which the claim is based.~~

~~—— (c) The obligee named in the payment bond need not be joined as a party to an action under this section.~~

~~—— (d) In any action upon a payment bond under this section, the court may award reasonable attorney fees to the prevailing party, which attorney fees shall be taxed as costs in the action.~~

~~—— (6) The payment bond shall be exhibited to any interested person upon request.~~

~~—— (7) In any suit upon a payment bond under this chapter, the court shall award~~

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~~reasonable attorney fees to the prevailing party.~~

~~—— (8) Unless otherwise specified in a lawful contract between the owner and the person making a claim under this section, the interest rate applicable to the claim is the rate described in Subsection 15-1-1(2)(3).~~

~~—— Section 3. Section 15-1-1 is amended to read:~~

‡ **15-1-1. Interest rates -- Contracted rate -- Legal rate.**

{ ~~—— (1) As used in this section, "federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.~~

‡ ~~{(1)}{(2)}~~ The parties to a lawful contract may agree upon any rate of interest for [the loan or forbearance of any money, goods, or chose in action that is] the subject of their contract.

~~{(2)} { } [Unless] {(3)}(a)~~ If a right to interest exists as a matter of law, but parties to a lawful contract [specify] have not specified a different rate of interest, the legal rate of interest for [the loan or forbearance of any money, goods, or] the contract or other chose in action [shall be] is 10% per annum { } {prior to judgment is the federal postjudgment interest plus 2%, } unless otherwise provided by law.

{ ~~—— (b) The federal postjudgment interest rate used for purposes of Subsection (3)(a) is the rate as of January 1 for the year in which:~~

~~—— (i) a contract is made; or~~

~~—— (ii) when the chose in action other than one based on contract accrues.~~

‡ ~~(c)~~ b The legal rate under Subsection ~~(3)2~~(a) at the time that a contract is made or other chose in action accrues, shall remain the interest rate for the duration of the contract or other chose in action.

~~{(3)} { } {(4)}(a)~~ Nothing in this section may be construed in any way to affect any penalty or interest charge that by law applies to delinquent or other taxes or to any contract or obligations made before May 14, 1981.

(b) The amendments to this section made by this bill, do not apply to any right to interest as a matter of law for any contract made or chose in action accruing before May 10, 2016.

Section {4. ~~Section 31A-22-428 is amended to read:~~

~~—— 31A-22-428. Interest payable on life insurance proceeds:~~

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~~—— (1) For a life insurance policy delivered or issued for delivery in this state on or after May 5, 2008, the insurer shall pay interest on the death proceeds payable upon the death of the insured:~~

~~—— (2) (a) Except as provided in Subsection (4), for the period beginning on the date of death and ending the day before the day described in Subsection (3)(b), interest under Subsection (1) shall accrue at a rate no less than the greater of:~~

~~—— (i) the rate applicable to policy funds left on deposit; and~~

~~—— (ii) the Two Year Treasury Constant Maturity Rate as published by the Federal Reserve:~~

~~—— (b) If there is no rate applicable to policy funds on deposit as stated in Subsection (2)(a)(i), then the Two Year Treasury Constant Maturity Rates as published by the Federal Reserve applies:~~

~~—— (c) The rate described in Subsection (2)(a) or (b) is the rate in effect on the day on which the death occurs:~~

~~—— (d) Interest is payable until the day on which the claim is paid:~~

~~—— (3) (a) Unless the claim is paid and except as provided in Subsection (4), beginning on the day described in Subsection (3)(b) and ending the day on which the claim is paid, interest shall accrue at the rate in Subsection (2) plus additional interest at the rate of 10% annually:~~

~~—— (b) Interest accrues under Subsection (3)(a) beginning with the day that is 31 days from the latest of:~~

~~—— (i) the day on which the insurer receives proof of death;~~

~~—— (ii) the day on which the insurer receives sufficient information to determine:~~

~~—— (A) liability;~~

~~—— (B) the extent of the liability; and~~

~~—— (C) the appropriate payee legally entitled to the proceeds; and~~

~~—— (iii) the day on which:~~

~~—— (A) legal impediments to payment of proceeds that depend on the action of parties other than the insurer are resolved; and~~

~~—— (B) the insurer receives sufficient evidence of the resolution of the legal impediments described in Subsection (3)(b)(iii)(A):~~

~~—— (4) A court of competent jurisdiction may require payment of interest from the date of death to the day on which a claim is paid at a rate equal to the sum of:~~

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~~\_\_\_\_\_ (a) the rate specified in Subsection (2); and~~

~~\_\_\_\_\_ (b) the legal rate identified in Subsection 15-1-1[(2)](3).~~

~~\_\_\_\_\_ Section 5. Section 31A-27a-512 is amended to read:~~

~~\_\_\_\_\_ 31A-27a-512. Reinsurer's liability.~~

~~\_\_\_\_\_ (1) (a) Except as otherwise provided in this chapter, the amount recoverable by the receiver from a reinsurer may not be reduced as a result of a delinquency proceeding with a finding of insolvency, regardless of any provision in the reinsurance contract or other agreement.~~

~~\_\_\_\_\_ (b) An agreement, written, oral, or otherwise, may not be enforced to the extent it is in conflict, or not in strict compliance with this section.~~

~~\_\_\_\_\_ (c) Except as expressly provided in this section, a person other than the receiver whether as a creditor, third party beneficiary, or otherwise does not have a direct right to reinsurance proceeds from any reinsurer of the insolvent insurer:~~

~~\_\_\_\_\_ (i) on the basis of any written or oral agreement; or~~

~~\_\_\_\_\_ (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.~~

~~\_\_\_\_\_ (d) This section applies to all the insurer's reinsurance contracts including:~~

~~\_\_\_\_\_ (i) treaty reinsurance;~~

~~\_\_\_\_\_ (ii) quota share reinsurance;~~

~~\_\_\_\_\_ (iii) facultative reinsurance; or~~

~~\_\_\_\_\_ (iv) a fronting or captive reinsurance arrangement.~~

~~\_\_\_\_\_ (2) Except as otherwise provided in Subsection (9), the amount recoverable by the liquidator from a reinsurer is payable under one or more contracts reinsured by the reinsurer on the basis of:~~

~~\_\_\_\_\_ (a) proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver, to the extent of the payment; or~~

~~\_\_\_\_\_ (b) the allowance of the claim pursuant to:~~

~~\_\_\_\_\_ (i) Section 31A-27a-608;~~

~~\_\_\_\_\_ (ii) an order of the receivership court; or~~

~~\_\_\_\_\_ (iii) a plan of rehabilitation.~~

~~\_\_\_\_\_ (3) If the insurer takes credit for a reinsurance contract in a filing or submission made to the commissioner and the reinsurance contract does not contain the provisions required with~~

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~~respect to the obligations of reinsurers in the event of insolvency of the reinsured, the reinsurance contract is considered to contain the provisions required with respect to:~~

~~—— (a) the obligations of reinsurers in the event of insolvency of the reinsured in order to obtain credit for reinsurance; or~~

~~—— (b) other applicable statutes.~~

~~—— (4) A reinsurance contract that under Subsection (3) is considered to contain certain provisions, is considered to contain a provision that:~~

~~—— (a) in the event of insolvency and the appointment of a receiver, the reinsurance obligation is payable to the ceding insurer or to its receiver without diminution because of the insolvency or because the receiver fails to pay all or a portion of the claim;~~

~~—— (b) payment shall be made upon either:~~

~~—— (i) to the extent of the payment, proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver; or~~

~~—— (ii) the allowance of the claim pursuant to:~~

~~—— (A) Section 31A-27a-608;~~

~~—— (B) an order of the receivership court; or~~

~~—— (C) a plan of rehabilitation; and~~

~~—— (c) if a reinsurer does not pay the amount billed by the receiver within 60 days after the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the statutory legal rate provided in Subsection 15-1-1[(2)](3), except that all or a portion of the interest may be waived as part of an arbitration proceeding.~~

~~—— (5) (a) The receiver shall notify in writing, in accordance with the terms of the contract, each reinsurer obligated in relation to the claim or the pendency of a claim against the reinsured company:~~

~~—— (b) The receiver's failure to give notice of a pending claim pursuant to a provision in a reinsurance contract:~~

~~—— (i) does not excuse the obligation of the reinsurer unless the reinsurer is prejudiced by the receiver's failure; and~~

~~—— (ii) if the reinsurer is prejudiced, reduces the reinsurer's obligations only to the extent of the prejudice.~~

~~—— (c) A reinsurer may interpose, at its own expense, in a proceeding in which a claim is~~



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~~to be adjudicated, any one or more defenses that the reinsurer considers available to the reinsured company or its receiver:~~

~~—— (6) The entry of an order of rehabilitation or liquidation:~~

~~—— (a) may not be considered a breach or an anticipatory breach of a reinsurance contract; and~~

~~—— (b) is not grounds for retroactive revocation or retroactive cancellation of a reinsurance contract by the reinsurer.~~

~~—— (7) (a) If a reinsurance payment to a receiver of a ceding insurer is later determined to be a payment in excess of the amounts actually due to the receiver, the excess shall be:~~

~~—— (i) credited against future payments due to the receiver; or~~

~~—— (ii) repaid to the reinsurer as an administrative expense of the estate pursuant to Subsection 31A-27a-701(2)(g).~~

~~—— (b) A repayment under this Subsection (7) may be limited on the basis of the property remaining in the estate.~~

~~—— (8) (a) Subject to Subsection (1):~~

~~—— (i) except as provided in Subsection (8)(a)(ii):~~

~~—— (A) a payment made by the reinsurer directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate; and~~

~~—— (B) a payment made by the reinsurer shall be made directly to the ceding insurer or its receiver;~~

~~—— (ii) Subsection (8)(a)(i) does not apply when:~~

~~—— (A) the reinsurance contract or other written agreement to which the insured, ceding insurer, and reinsurer are all parties:~~

~~—— (I) specifically provides another payee, other than an affiliate of the ceding insurer or reinsurer, of the reinsurance in the event of the insolvency or receivership of the ceding insurer; and~~

~~—— (II) the provision described in this Subsection (8)(a)(ii)(A) is contained in:~~

~~—— (Aa) the reinsurance contract as it is written on the day on which the reinsurance contract is initially executed; or~~

~~—— (Bb) the other written agreement as it is written on the day on which the initial policy is issued;~~

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~~—— (B) the reinsurance contract, as it is written on the day on which the reinsurance contract is initially executed, contains a provision where the assuming insurer with the consent of the direct insured and the ceding insurer assumes all policy obligations of the ceding insurer:~~

~~—— (I) as a direct obligation of the assuming insurer to the payees under the policies; and~~

~~—— (II) in substitution for the entire obligations of the ceding insurer to the payees; or~~

~~—— (C) a life and health insurance guaranty association makes the election to succeed to the rights and obligations of the insolvent insurer under a contract of reinsurance:~~

~~—— (I) in accordance with:~~

~~—— (Aa) Section 31A-27a-513; or~~

~~—— (Bb) the life and health guaranty association laws of its domiciliary state; or~~

~~—— (H) pursuant to other applicable law, rule, order, or assignment contract; and~~

~~—— (iii) in the circumstances described in Subsection (8)(a)(ii)(C), a payment shall be made directly to or at the direction of the guaranty association:~~

~~—— (b) Both the receiver and the reinsurer are entitled to recover from a person, other than the receiver or a guaranty association, who unsuccessfully makes a claim directly against the reinsurer the following incurred in preventing any collection by that person:~~

~~—— (i) the person's attorney fees; and~~

~~—— (ii) expenses.~~

~~—— (9) This chapter may not be construed to authorize the liquidator or any other entity to compel payment from a nonlife reinsurer:~~

~~—— (a) on the basis of estimated incurred but not reported losses, loss expenses, or case reserves for unpaid losses and loss expenses, except under Sections 31A-27a-515 and 31A-27a-516; and~~

~~—— (b) with respect to a claim allowed in accordance with Section 31A-27a-605:~~

~~—— Section 6. Section ~~38-1a-309~~ is amended to read:~~

~~—— **38-1a-309. Interest rate on lien.**~~

~~—— Unless otherwise specified in a lawful contract between the owner-builder and the person claiming a lien under this chapter, the interest rate applicable to the lien is the rate described in Subsection 15-1-1[(2)](3).~~

~~—— Section 7. Section ~~57-8-44~~ is amended to read:~~

~~—— **57-8-44. Lien in favor of association of unit owners for assessments and costs of**~~

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### **collection:**

~~—— (1) (a) Except as provided in Section 57-8-13.1, an association of unit owners has a lien on a unit for:~~

~~—— (i) an assessment;~~

~~—— (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:~~

~~—— (A) court costs and reasonable attorney fees;~~

~~—— (B) late charges;~~

~~—— (C) interest; and~~

~~—— (D) any other amount that the association of unit owners is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and~~

~~—— (iii) a fine that the association of unit owners imposes against a unit owner in accordance with Section 57-8-37, if:~~

~~—— (A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit owner did not file an appeal; or~~

~~—— (B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8-37(1).~~

~~—— (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).~~

~~—— (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association of unit owners otherwise provides in a notice of assessment.~~

~~—— (3) An unpaid assessment or fine accrues interest at the rate provided:~~

~~—— (a) in Subsection 15-1-1[(2)](3); or~~

~~—— (b) in the governing documents, if the governing documents provide for a different interest rate.~~

~~—— (4) A lien under this section has priority over each other lien and encumbrance on a unit except:~~

~~—— (a) a lien or encumbrance recorded before the declaration is recorded;~~

~~—— (b) a first or second security interest on the unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the association of unit~~

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owners; or

~~—— (c) a lien for real estate taxes or other governmental assessments or charges against the unit.~~

~~—— (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.~~

~~—— (6) Unless the declaration provides otherwise, if two or more associations of unit owners have liens for assessments on the same unit, the liens have equal priority, regardless of when the liens are created.~~

~~—— Section 8. Section 57-8a-301 is amended to read:~~

~~—— **57-8a-301. Lien in favor of association for assessments and costs of collection.**~~

~~—— (1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:~~

~~—— (i) an assessment;~~

~~—— (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:~~

~~—— (A) court costs and reasonable attorney fees;~~

~~—— (B) late charges;~~

~~—— (C) interest; and~~

~~—— (D) any other amount that the association is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and~~

~~—— (iii) a fine that the association imposes against a lot owner in accordance with Section 57-8a-208, if:~~

~~—— (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot owner did not file an appeal; or~~

~~—— (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).~~

~~—— (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).~~

~~—— (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.~~

~~—— (3) An unpaid assessment or fine accrues interest at the rate provided:~~

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~~— (a) in Subsection 15-1-1[(2)](3); or~~

~~— (b) in the declaration, if the declaration provides for a different interest rate.~~

~~— (4) A lien under this section has priority over each other lien and encumbrance on a lot except:~~

~~— (a) a lien or encumbrance recorded before the declaration is recorded;~~

~~— (b) a first or second security interest on the lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the association; or~~

~~— (c) a lien for real estate taxes or other governmental assessments or charges against the lot.~~

~~— (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.~~

~~— (6) Unless the declaration provides otherwise, if two or more associations have liens for assessments on the same lot, the liens have equal priority, regardless of when the liens are created.~~

~~— Section 9. Section **63G-6a-1910** is amended to read:~~

~~— **63G-6a-1910. Interest rates.**~~

~~— (1) In controversies between a procurement unit and a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.~~

~~— (2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1[(2)](3).~~

~~— (3) This section does not apply to public assistance benefits programs.~~

~~— Section 10}2. **Revisor instructions.**~~

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the language in Subsection 15-1-1(~~4~~3)(b) from "this bill" to the bill's designated chapter number in the Laws of Utah.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel**